

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHIEK D. SMITH-EL,

Petitioner,

v.

WARREN C. EVANS,

Respondent.

CASE NO. 09-11309
HONORABLE GEORGE CARAM STEEH
MAGISTRATE JUDGE HLUCHANIUK

ORDER OF DISMISSAL

On April 8, 2009, petitioner Shiek D. Smith-El filed a *pro se* petition for the writ of habeas corpus. At the time, Petitioner was confined at the Wayne County Jail in Hamtramck, Michigan. The habeas petition appeared to challenge a Wayne County Circuit Court order holding Petitioner in contempt of court for refusing to pay child support.

Although a habeas corpus petition is available to challenge a state court's civil contempt order for failure to pay child support, a petitioner must first exhaust state remedies for his claims. *Leonard v. Hammond*, 804 F.2d 838, 840 (4th Cir. 1986). "It is the petitioner's burden to prove exhaustion." *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994) (citing *Darr v. Burford*, 339 U.S. 200, 218-19 (1950)). Petitioner has failed to show that he exhausted any state remedies for his claims.

Furthermore, he has failed to keep the Court informed of his current address. He paid the filing fee for this action on April 16, 2009, and he applied for appointment of counsel on April 17, 2009. However, a document mailed to Petitioner at the Wayne County Jail in May of 2009 was returned to the Court on July 17, 2009, with the notations "RTS Released" and "Return to

Sender. Not Deliverable as addressed. Unable to forward.” The Court has not heard from Petitioner for over a year, despite the fact that he apparently is no longer confined in jail. Accordingly, the habeas petition is **DISMISSED** without prejudice for failure to prosecute, Local Rule 41.2 (E.D. Mich. Mar. 2, 1998), and for failure to exhaust state remedies, 28 U.S.C. § 2254(b)(1).

Dated: June 2, 2010

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
June 2, 2010, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk